Association française
des marchés financiers

FINANCIAL MARKET PROFESSIONALS

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EBA's consultation on draft guidelines on the data collection exercise regarding high earners (EBA/CP/2014/05)

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AMAFI's answer

1. Association française des marchés financiers (AMAFI) is the trade organisation working at national, European and international levels to represent financial market participants in France. It acts on behalf of credit institutions, investment firms and trading and post-trade infrastructures, regardless of where they operate or where their clients or counterparties are located. AMAFI has more than 120 members operating for their own account or for clients in different segments, particularly organised and over-the-counter markets for equities, fixed-income products and derivatives. Nearly one-third of its members are subsidiaries or branches of non-French institutions.

2. AMAFI welcomes the opportunity to comment on the proposed guidelines on the data collection exercise regarding high earners.

For any further information, please contact Stephanie Hubert, Director of compliance (shubert@amafi.fr, +331 53 83 00 87).

3. As a general comment, AMAFI notes that the Guidelines seem to have been prepared without giving consideration to investment firms. Even though CRD4 applies to investment firms, after having been prepared with credit institutions in mind, it does not seem that ESMA's Securities and Markets Stakeholder group has been asked for an opinion on this consultation paper.

Q1: Are the subject matter and scope of the Guidelines sufficiently clear?

4. The scope of high earner data collection excludes high earners in third countries, which is reasonable. We note however that the benchmarking exercise includes high earners in third countries, which should be made consistent, especially since the intention is to also include individuals who are not risk takers.

5. More generally, this double reporting is confusing: as is currently proposed, high earners in scope of both exercises are the same (with the exception of the ones in third countries), creating a real confusion as to the need for two separate reports.

In our view therefore:

- The high earners exercise should only focus on non material risk takers earning 1 million euro or more;
- Annex 3 of the benchmarking exercise should focus on identified staff earning 1 million euro or more as per the level 1 text (see our answer to Q4 of CP/2014/04).

In addition, as the remuneration of non material risk takers is not regulated, the information required should not be as detailed as proposed.

6. As regards the scope of institutions considered for this exercise, AMAFI notes that it is larger than for the 2012 exercise, without any justification provided.

The 2012 exercise excluded investment firms referred to in Article 20(2) of Directive 2006/49/EC (firms whose activities present lower risks and are therefore required to hold a lesser amount of own funds) which is not the case in the proposed draft. As there does not seem to be a reason for this modification, AMAFI suggests that this exclusion be reinstated by referring to the corresponding article in the CRD4 legislation, i.e. Article 96(1) of Regulation EU No 575/2013.

7. On another point, § 1.5 of the proposed Guidelines states that "*competent authorities should collect information on high earners from all institutions established in the EEA*", giving the impression that each institution should report to its competent authority. However, § 1.7 makes clear that "*institutions should provide, and competent authorities should collect, information at the highest level of consolidation*". Wording of § 1.5 should therefore be amended to make sure no confusion is possible between the two statements.

Q2: Is the information to be submitted to the EBA sufficiently clear?

8. Yes

Q5: Is the template in Annex 1 appropriate and sufficiently clear?

9. We have the same comments as for Annexes 1 and 2 of the benchmarking exercise, which are reproduced below:

a. AMAFI understands the need to compare in as much detail as possible the remuneration granted by institutions. <u>However, it is doubtful that the proposed range of businesses/functions will ensure comparison of comparables, whereas it is quite certain that obtaining this level of information will be time consuming and operationally complex</u>.

   Considering that getting this granularity of information for each entity in scope and for all staff will be difficult for groups and considering that a greater breakdown may not provide better comparability, on the opposite, <u>AMAFI suggests maintaining the breakdown used so far in the benchmarking exercise of 2012</u> (i.e. between the three main business lines and the category "other").

b. As regard the breakdown between members of the management body in its supervisory functions and members of the management body in its management functions, such breakdown implies that firms' information systems be able to distinguish between these two categories for each of the entities in scope of consolidation, which may amount to several hundred for large groups. This would be operationally very time consuming and burdensome, as this information is not readily available.

   Incidentally, if these categories were to be maintained, the differences between them should be made clearer: the footnotes should reproduce or reference the definitions in Article 3.8 and 3.9 of the Directive. In addition, a person can belong to both categories – it should be noted that in such cases, only one category should be populated for the person concerned. Furthermore, many members of the board do not receive remuneration but attendance fees. It should therefore be indicated for the sake of clarity that such fees are not to be disclosed in these annexes.

c. As regard corporate functions, they are defined in footnote 6 as functions that have responsibilities for the whole institution, e. g. human resources, IT. As the reporting is prepared on a consolidated basis, we understand that this only includes corporate functions exercising their responsibilities at group level (i.e. for example the head of IT in investment banking would be reported under investment banking and not corporate functions). It would indeed be really cumbersome and difficult to isolate corporate functions in each line of business and each entity to report them as an aggregate.

d. Remuneration in asset management are governed by other Directives than CRD4, it is therefore highly questionable to include this business in the template, or at least it should be specified that the expectation for this business is limited to upper management who could fall under the CRD4 directive due to the group's approach.

e. Footnote 3 indicates which activities are included in investment banking: corporate banking should be added. This comment relates also to footnote 4 that indicates that retail banking includes total lending activity to individuals and enterprises, whereas an important part of this activity is conducted within investment banking. It should therefore be made clear that lending can be part of both businesses.

Q4: Are the reporting period and the specific amounts to be reported sufficiently clear?

10. Yes

Q5: Are the indicated time periods sufficient to ensure that the data for 2013 can be collected in line with the updated Guidelines?

11. AMAFI is concerned that the guidelines will not be finalised (i.e. endorsed by each competent authority) by 31 August 2014, the date at which institutions should submit their report, due to time needed to consider the comments received as a result of the consultation and the two-month period granted to competent authorities to notify whether they comply or intend to comply with these guidelines.

Even if it were, the time left for institutions to modify their systems in order to gather and compute these data would be too short.

12. AMAFI therefore suggests that the submission date for the first year of implementation should be the end of 2014.

Q 6: Do you agree with our analysis of the impact of the proposals in this Consultation Paper? If not, can you provide any evidence or data that would explain why you disagree or might further inform our analysis of the likely impacts of the proposals?

13. The impact analysis should also consider the extension of the scope to investment firms that were out of scope previously (see Q1).